IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3263 OF 2006

Vaibhav Chandrakant Bane & Ors. .. Applicants

Versus

State of Maharashtra .. Respondents

Mr.Prakash Wagh for applicants

Ms.Rajeshree Gadhavi, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 11th September 2006.

P.C.

. Applicants were charged with offences punishable under the Maharashtra Protection of Individual Depositors Act (MPID) and section 420 of I.P.C. Upon charge sheet being filed and

investigations being complete, application for enlarging them on bail was filed which came to be rejected. However, after the Full Bench decision of this Court declaring the MPID Act as ultra vires, the applicants preferred Bail Application No.2 of 2006 before the Trial Court.

2. The trial court observed that these are changed circumstances and, therefore, the applicants deserved to be enlarged on bail. However, while enlarging the applicants on bail the trial court imposed, amongst others, the following conditions:-

> "1. The applicant No.1 Shri Vaibhav Chandrakant Bane, Applicant No.2 Shri Dasharath Shankar More and Applicant No.3 Sagar Chandrakant Bane be released on bail, on furnishing P.R.Bond of Rs.3 lakhs each with solvent surety of Rs.3 lakhs each."

3. Applicants thereafter, approached the trial court to reduce the amount of surety bond of Rs.3 lakhs and substitute it by condition to furnish the surety bond of Rs.10,000/-. Even that application was rejected by the trial court on 1st August 2006.

4. Applicants' Counsel submits that as a result of the above, applicants could not avail of the bail granted by the trial court as early as on 8th June 2003.

5. Before the trial court as also before this Court, the applicants reiterated that each one of them is a middle class person and have been languishing in jail, since application for said relief was rejected all through out and even by this Court. The C.R. is of 2003. Applicants are arrested in November 2003 and thus they are

in custody for more than 2 and half years.

6. Specific statement is made in the present application that the other accused in this case are released on bail on furnishing a surety bond between Rs.10,000 and 25,000 and the same criteria ought to have been applied by the trial court. Because of the fact that their financial condition does not permit them to arrange for such large sum, present application is filed. Ms.Gadhvi states that the co-accused did not have identical role to pay in the entire incident. She submits that the monies collected from lower middle class and middle class persons have been utilised by the present applicants on the assurances that they would pay interest and the same have not been fulfilled. The amount misappropriated is to the tune of Rs.3 Crores.

7. After perusing the orders passed by the trial court, it is apparent that the trial court

has recorded submissions of A.P.P. that the amount appropriated is to the tune of almost about Rs.36 lakhs and odd. Despite noticing as above the trial court has imposed these conditions.

8. Application for reduction of the amount has also not been considered when a specific plea was made that other accused have been granted bail in the sum of Rs.10,000 to 25,000/-.

9. Time and again the Supreme Court has emphasised the fact that while imposing conditions on the applicants for enlarging them on bail, the same should be such as would meet the mandate of fairness, equality enshrined in the Constitution of India so also comply with the Mandate of Article 21 thereof. The conditions ought not be onerous and incapable or impossible of being complied with. The condition should not be such as would mean that bail is denied. In

the facts and circumstances of the present case, the condition of grant of bail in the sum of Rs.3 lakhs amounts to denying bail. In the present case, after the applicants have been enlarged on bail and the surety amounts with regard to the other accused brought on record, the prosecution cannot persist with its stand that the applicant should furnish sureties in the sum of Rs.3 lakhs.

10. Considering the totality of the circumstances and after perusing the papers, in my view, interest of justice would be sub-served if the applicants are enlarged on bail in the sum of Rs.50,000/- each with direction to furnish sureties as directed by the trial court. Other conditions remain untouched and unaffected. Application disposed of in the above terms. Trial court's order shall stand substituted to the above extent. All concerned to act on an authenticated copy of this order.

(S.C.Dharmadhikari, J)